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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,010	05/24/2001	Stephen S. Macey	WAT5-BI35	3794
21611	7590	11/02/2004	EXAMINER	
SNELL & WILMER LLP 1920 MAIN STREET SUITE 1200 IRVINE, CA 92614-7230			BANGACHON, WILLIAM L	
			ART UNIT	PAPER NUMBER
			2635	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/865,010

**Applicant(s)**

MACEY, STEPHEN S.

**Examiner**

William Bangachon

**Art Unit**

2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Examiner's Response***

1. In response to the application filed 5/24/01, the application has been examined. The Examiner has considered the presentation of claims in view of the disclosure and the present state of the prior art. It is the Examiner's position that claims 1-20 are unpatentable for the reasons set forth in this Office action:

### ***Information Disclosure Statement***

2. It is noted that there is no PTO 1449 submitted with this application.

### ***Specification***

3. The "**Cross-Reference to Related Application**" section of the disclosure is objected to because the serial number of the related application is not supplied (page 1, line 4; page 6, lines 26-27; page 10, lines 6-7). Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-20 rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0070875 (Crumb).

In claims 1 and 7, Crumb teach of a spa system (10) including a remote control (12) for controlling operation thereof, said system comprising:

a. a remote control module (12) having a microprocessor (18) and memory (not shown) therefor and receptive to push-button inputs (24) and having a display (26)

thereon, and having a first antenna (16) for transmitting signals to said spa and for receiving signals from said spa [0018, 0032];

b. a master control module (14) residing in said spa for controlling and sensing a multiplicity of functions of said spa [0039]; and,

c. a slave control module (30) coupled to said master control module (14) and having a second antenna (30) responsive to command signals received from said remote control (12) and for transmitting status signals back to said remote control, said slave control module (30) being disposed for converting said command signals received from said remote control (12) for said master control (14), and for converting status signals received from said master control (14) for transmission back to said remote control [0020, 0033, 0043].

Although the figures of Crumb do not show a memory in the remote control module (12), these features are conventional in the design of microprocessor based remote controller and would have been obvious in the system of Crumb, to one of ordinary skill in the art. Most microprocessors have its own internal memory used to store data. Obviously, the microprocessor (18) of the remote control module of Crumb has internal memory because this is where control signal resides, as well as status information received from the master control module (14).

In claim 2, a first of said command signals received from said remote control is set temperature [0034, 0035, 0039].

In claim 3, a first of said status signals received from said master control is water temperature [0036].

In claim 4, said remote control (12) transmits command signals and receives status signals with the use of radio frequencies [0029].

In claims 5 and 9, said remote control (12) includes an RF transceiver (16) coupled between an output of said microprocessor (18) and said first antenna [0018].

In claims 6 and 8, said remote control (12) is responsive to a reduced number of push-buttons (figure 4A) [0034].

Claims 10-20 recites a method for practicing the system of claims 1-6 and therefore rejected for the same reasons.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USP 4,404,697 (Hatcher) and USP 6,561,070 (Macey) are cited in that these patents teach of a remote control system for spas {see whole document}.

***Examiner Contact Information***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Bangachon whose telephone number is 571-272-3065. The examiner can normally be reached on 4/4/10.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 571-272-3068. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9314 for regular and After Final formal communications. The examiner's fax number is 571-273-3065 for informal communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

William L Bangachon  
Examiner  
Art Unit 2635

October 26, 2004

MICHAEL HORABIK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

